set out in the case of *Seymour v. Regina*[1], it was open to the jury to find the second appellant guilty of the principal charge of house-breaking in order to the committing of the offence of theft or guilty of the alternative charge of dishonestly retaining stolen property having reason to believe the same to be stolen property and the jury have by their verdict found the second appellant guilty of the principal charge. We sit as a Court of Appeal and it is not for us to usurp the functions of the jury and for us to say that we would not have arrived at the same verdict as the jury on the evidence. We are of the opinion therefore that the second appellant's appeal against his conviction should be dismissed.

[The rest of the judgment dealt with the appeal of the third appellant, which is not, for the purposes of this report reproduced].

Appeal dismissed

JAMALIAH v. CHIK & ANOR.

[R. C. J. (Rigby J.) September 12, 1957]

[Penang — Civil Revision No. 3 of 1957]

Contract — Breach of — Action for damages — Whether Magistrate has jurisdiction to entertain claim.

In this case the plaintiff allegedly engaged each of the defendants to execute certain work for her, to be completed within a specified period, in consideration of payment of agreed sums of money. In each case it was alleged that the work was unfinished despite her repeated requests to the defendants to complete such work. The plaintiff accordingly had to engage other persons to complete the work and she sought to recover from the defendants the estimated cost of completing the work. The Magistrate summarily dismissed each claim for want of jurisdiction.

Held: in their essence, the claims amounted to no more than simple actions for damages for breach of contract, the damages claimed being the estimated amount required to complete the contract breached, or, in the alternative, to actions for the recovery of moneys had and received for which consideraion had not been given. In either instance, and whichever way one looks at it, such actions came within the jurisdiction of the Magistrate.

REVISION IN CHAMBERS.

Rigby J. : — In these two actions the plaintiff allegedly engaged the defendant in each action to execute certain work for her, to be completed within a specified period, in consideration of payment of agreed sums of money. In each case the contract price was paid, save for a few dollars, and in each case it is alleged by the plaintiff that the work was unfinished despite her repeated requests to the defendants to complete such work. The plaintiff alleges that she was accordingly compelled to engage other persons to complete the work and she seeks to recover from the defendant in each case the estimated cost of completing the work which that defendant had undertaken upon payment of the agreed price so to complete. The learned Magistrate summarily dismissed each claim for want of jurisdiction on the ground that the plaintiff was asking, in terms, for a declaratory order for the specific performance of certain contracts made between her and the defendants and that certain pieces of work as contracted had not been completed by the defendants and that the uncompleted part of the work amounted to the value of the specific sums claimed by the plaintiff in her respective Statements of Claim. With great respect to the learned Magistrate I am unable to agree that he had no jurisdiction to entertain the claims. In their essence, they amount to no more than simple actions for damages for breach of contract, the damages claimed being the estimated amount required to complete the contract breached, or, in the alternative, to actions for the recovery of moneys had and received for which consideration has not been given. In either instance, and which ever way one looks at it, such actions would clearly come within the jurisdiction of the learned Magistrate. Under section 57 of the Courts Ordinance. I accordingly remit such actions to the learned Magistrate and direct that he try the issues between the parties.

Order accordingly.